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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 7th October 2004

No. 8908–li/1(SS)-18/2001-(Pt.)-L. E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th July 2004, Industrial Dispute Case No. 45/2002 of the Presiding Officer, Labour Court, Sambalpur to whom the Industrial Disputes between the Management of M/s. Sreechem Resins Ltd., Jhagarpur, Dist. Sundargarh and its workman Shri Rajendra Kumar Swain was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER

LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 45 OF 2002

Dated the 16th July 2004

Present :

Shri P. C. Mishra
Presiding Officer
Labour Court, Sambalpur.

Between :

The Management of
M/s. Sreechem Resins Ltd.
Jhagarpur, Dist. Sundargarh.

.. First Party–Management

And

Their Workman
Shri Rajendra Kumar Swain
Qrts. No. J/7, I. T. Colony
Rajgangpur, Dist. Sundargarh.

.. Second Party–Workman

Appearances :

For the First Party–Management	..	Shri G. Pujari, Advocate
For the Second Party–Workman	..	Shri P. K. Dash, Advocate

AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Sections 10 & 12 of the Industrial Disputes Act, 1947 for adjudication of the dispute vide Memo. No. 6891 (5), dated the 31st May 2002 Schedule below :—

“Whether the termination of services of Shri Rajendra Kumar Swain, Shift Assistant by M/s. Sreechem Resins Ltd. with effect from the 28th November 1999 is legal and / or justified ? If not, what relief he is entitled to ?”

2. The case of the second party workman in brief is that he was appointed and working as Shift Assistant with effect from the 9th November 1991 under the first party management sincerely, efficiently and diligently till his services were suddenly terminated by the management with effect from the 28th November 1999 on the false allegation of negligence in duty, without any enquiry.

The workman alleges that on the 19th February 1999, the management, with an evil design to retrench him, put him under suspension for 3 days on the charges that on the 17th February 1999 during production he was on ‘C’ Shift duty and he intentionally put a 2ft. M. S. rod in the Kettle which could have caused damage to plant & machinery and hampered production, which is nothing but a mere imagination and apprehension and no danger was caused or happened. After submission of explanation, his suspension was further extended arbitrarily & illegally without a valid enquiry. He should have been called and in his presence the rod, if any should have been brought out but it was not done by the management. On the 25th February 1999 under compulsion by management he wrote the dictation of management and confessed to have dropped the rod so as to save his employment.

That again on the 18th November 1999, the management levelled false allegation that on the 17th November 1999 due to his negligence, the products of the Batch was rejected, but the products might have been of lesser quality due to poor quality of manufacturing materials and infrastructure supplied by management. The allegation of tampering the graph by second party is concocted, misleading and motivated to terminate his service, and therefore called upon the management for its strict proof. The workman further stated that the management terminated his service vide letter, dated the 17th December 1999 with effect from the 28th November 1999 and thereafter the management vide letter, dated the 3rd February 2000 said to have enquired the matter through an Enquiry Officer but it was false and purposefully made to fulfil legal necessity to sustain the order of termination. He was not given an opportunity of hearing and even the copy of enquiry report and the proposed

punishment was not served upon him. He remained unemployed after termination. Hence, according to the second party workman, his termination is arbitrary, illegal, unjust and motivated to keep somebody else in the post. Therefore, the workman pray for his reinstatement with full back wages.

3. The first party management contested the case by filing its written statement. According to the written statement of the first party management, the establishment of the first party is a Chemical Industry engaged in the manufacturing of an adhesive primarily used in refractories. The plant is most automatic and it calls for extreme carefulness as any negligence may endanger human life besides damaging the machineries. The Shift Assistant is the person who handles the machineries and workers work under his direction. Production Manager decides which product is to be produced and passes on the instruction in the register for the purpose.

On the 17th February 1999 the second party was in 'C' Shift duty. He was responsible for dropping an M. S. Rod of 2 ft. in the Kettle, which could have not only damaged the Kettle and human life. The second party has admitted the same in his show cause.

On the 17th November 1999 the second party was in 'C' Shift and was to manufacture Duraband-50 (Part II). For the said purpose he was to keep the initial water tolerance in the range of 1:2 to 1: 3. He did not maintain the required desired water tolerance and it became nil consequently the batch was rejected. He had also tempered the graph sheet to mislead the management.

In view of aforesaid conduct the second party lost the confidence of the management and was terminated from service with effect from the 28th November 1999.

The action of the management is just, proper and lawful and is meant to protect man and machinery, which is in the interest of the industry. The management further contends that the termination of the second party was as per the terms and contract of service and as such the same is legal and justified. Further continuance of the second party is dangerous to the safety of the Industry. Further the management contends that the second party is not a workman and there is no Industrial dispute as defined under the I. D. Act and as such according to the first party management the reference made by the Government is bad in law, hence not maintainable.

4. Basing on the pleadings of both the parties, the following issues are framed for discussion:—

ISSUES

- (i) "Whether the termination of services of Shri Rajendra Kumar Swain, Shift Assistant by M/s. Sreechem Resins Ltd., with effect from the 28th November 1999 is legal and justified ?
- (ii) What relief, if any, the workman is entitled to ?"

FINDINGS

5. *Issue No. (i)*—The workman in order to prove his case, examined himself as W. W. 1 and filed documents marked Exhibits A to F. Ext A is the suspension order dated the

19th February 1999. Ext. B is the carbon copy of his explanation dated the 21st February 1999 to the charges made in the suspension order (Ext. A) dated the 19th February 1999. Ext. C is the order of management dated the 1st March 1999 giving warning and keeping the workman under observation. Ext. D is the termination order dated the 27th November 1999. Ext. E and E/1 are conciliation failure report and Ext. F is the letter dated the 3rd February 2000 of management remitting dues of workman. The workman has challenged his termination order mainly on two grounds. His first challenge is that the allegation made by the first party management are false and secondly he alleges that his services were illegally terminated without even holding a valid enquiry and giving him any opportunity of being heard so as to accommodate other persons in his post. The management on the other hand to justify his action examined Shri S. K. Sarkar, General Manager (Operation) and Shri P. S. Biridi, Quality Control Manager and filed documents marked Ext. 1 to 7/a. Ext. 1 is the explanation dated the 25th February 1999 of workman explaining and admitting guilty to the charges levelled against him vide charges/suspension order dated the 19th February 1999 (Ext. A). Although he had denied that charges vide his explanation dated the 31st February 1999 (Ext. B) in the explanation letter dated the 25th February 1999 (Ext. 1) the second party workman has narrated in details the circumstances under which the alleged things happened. Ext. 2 is the batch sheet liquid resole Resin (Page No. 171) dated the 17th November 1999. Ext. 3 is the charge framed against him vide Management's letter dated the 18th November 1999. Ext. 4 is the reply to charges made on the 18th November 1999. Ext. 5 is the xerox copy of Circular dated the 24th September 1998 asking to maintain punctuality. Ext. 6 is the original graph maintained during the production on the 17th November 1999. Ext. 7 is carbon copy of Test report and Ext. 7/a is the signature of the authority of Test report. From the materials on record it is quite clear that the management has terminated the services of workman on the charges of misconduct without following a lawful domestic enquiry. It is the settled position of law that in a situation where no domestic enquiry has been held to prove the charges of misconduct and a case of defective enquiry stand on the same footing and even if the management has discharged a workman on the ground of misconduct without conducting an enquiry that itself cannot *ipso facto* give a right to the workman for his reinstatement and in that situation the management still has a right to prove its action by leading evidence for the first time in the Court. And the first party management in the present case has availed that right (1993 LLJ, the Management of Firestone case). The management has in order to justify its action relied on the oral and documentary evidence adduced before the Court. The first allegation against the workman vide Ext. A is that he put intentionally a two feet M. S. Rod in the Kettle while working in the 'C' shift duty on the 17th February 1999 and he neither took any care to lift the said Rod during production nor informed the matter to anyone in the department for doing the needful as it would have break down the plant and machinery but luckily saved. The workman although at first denied the charges vide Ext. B on the 21st February 1999 but on the 25th February 1999 he filed detail explanation vide Ext. narrating the circumstances under which the said two feet M. S. Rod had fallen inside the Kettle and the circumstances under which he could not inform his higher boss about the incident and for that he begged

apology from the management for his said serious lapses. The second party now says that he made the said explanation dated the 25th February 1999 (Ext. 1) on the undue pressure and dictation of the Manager (Operation) Shri S. K. Sarkar (M. W. 1) but from a bare insight into the contents of the said explanation (Ext. 1), it is not at all convincing to accept such after thought plea taken by the workman. In fact the contents clearly show that the workman has in a cool mind described the happenings of his 'C' shift duty dated the 17th February 1999 leading to fall of the M. S. Rod into the Kettle and it is not possible for anyone else to dictate what he has written in the explanation (Ext. 1). The falling of Rod into the Kettle may not be his *mala fide* intention but is a fact that the said M. S. Rod had fallen and the second party workman has not informed his authority about the incident. The management says that the falling of said M. S. Rod in the Kettle could have caused stoppage of production and break down of the Plant and Machinery. The workman in his cross-examination has not denied this rather stated that he cannot say what could have happened. Considering that the establishment of the management is a Chemical Industry negligence on the part of the workman cannot be taken lightly. The workman being the shift Assistant in-charge of supervision during the production in 'C' shift duty, he is fully liable for the happenings during his shift. Therefore, in the peculiar facts and circumstances, the allegation of management is held to have been well proved beyond all reasonable doubt.

6. Now coming to the charge dated the 17th November 1999 levelled against the workman the management relied on the documents marked Ext. 2 to 7. Ext. 2 is the batch sheet liquid Resole Resin No. 170, dated the 17th November 1999 for production of Duraband-50 (Part II) and has been marked without objection. It (Ext. 2) contains the process details for production of the said product and it was duly signed by the workman vide Ext. 2/a. The first party vide its letter dated the 18th November 1999 levelled allegation against the workman that on the 17th November 1999 in 'C' shift duty of workman he was advised to manufacture Duraband-50 (Part II) for which the batch was taken. In the daily production instruction (Ext. 2) the workman was instructed to keep the initial water tolerance in the range of 1:2 to 1:3 but because of negligence of workman the Batch was rejected due to nil water tolerance. Besides that, on scrutinisation of the concerned batch sheet it is found that he had not checked the water tolerance after the prescribed interval or holding time and the concerned graph sheet was intentionally scratched by the workman and he had also removed the pen from the graph sheet. Hence the workman was asked to explain for such negligence. The workman filed his explanation vide Ext. 4 admitting the charges levelled in the Ext. 3 but he tried to give an evasive reply to justify the incident and prove his innocence. The second party, in his statement of claim and also during his cross-examination at para. 18 admitted that as a Shift Assistant it was his duty to see that the raw materials are mixed properly in the right proportion, kept in the Kettle properly and required temperature is maintained and he has to keep watch on the generator, burner and quality of the product. In his cross-examination at para. 35 the workman also admitted that he had to constantly watch the temperature of the Kettle as the water tolerance is the most important factor in the process. Also at para. 32 of his evidence the workman admitted that, there is a schedule about what temperature is to be maintained at

what time during the processing of the batch/product and he cannot say what will happen if the required temperature is not maintained. The said temperature is automatically recorded in a graph which is a covered one and situated near the Kettle '. Also at para. 33 and 34 of his cross-examination the second party admitted that he handled the batch vide Ext. 2 from 9 P.M. of the 17th November 1999 to 6 A. M. of the 18th November 1999 and that he maintained and recorded the temperature at 11. 25 P. M. in Ext. 2. In his explanation (Ext. 4) he stated that at 11.15 P. M. the water tolerance was 1:0.6 and also in Ext. 2 he himself has written that the water tolerance at 11.25 P. M. was 1: 0.6 which was beyond the instruction given for maintenance of the level of water tolerance of the product. So also regarding allegation of intentionally scratching of graph sheet (Ext. 6) the second party in his explanation Ext. 1 stated that "as we thought the material to be discharged so we took out the graph and as we were in hurry few drops of RMI 06 were dropped on the graph which were kept to wash the P. H. Meter and to suck the same we used chalk for which the chalk stain remained on the graph". Further the workman at para. 22 of has clearly admitted that he was supervising the work of other labourer while in shift duty. Thus, from the above it is clear that the allegation of management in his show cause notice vide Ext. 3 is not at all a false one rather the evidence and explanation of the workman fully support the allegation of the management and it is clear that the workman is guilty of negligence of duty resulting in rejection of said batch product and he is also guilty of scratching the graph to hide out his negligence for escaping the liability. Hence this charge is also well proved against the workman.

From the documents and evidence of both the parties I am of the opinion that the management has not falsely and *mala fidely* removed the workman from his service to accomodate other person in his post. The workman though alleges *mala fides* in terminating his service to accomodate other persons, he has not stated the name of any person who has been so accommodated in his post by the management. The management being a Chemical Industry such negligence and fraud on the part of the second party workman does not deserve his continuance in employment.

7. *Issu No. (ii)*— Now the next point for consideration is whether the punishment of dismissal of workman from service in the given circumstances of proved misconduct is too harsh and shockingly disproportionate so as to warrant interference by this Court by exercising its power under Section 11 A of the Industrial Disputes Act 1947. Admittedly, the establishment of the first party management is a Chemical Industry. It requires thorough and expert knowledge, workmanship, care and utmost alertness throughout the production process, which the workman appears to have been lacking and that led to the issue of charge-sheet against him for more than once. Under such circumstances, the pleading and apprehensions of the management that it lost confidence on the workman and that further continuance of the workman in the industry is dangerous both to life and property assumes greater significance and importance and thus the same cannot be left unheeded in the overall interest of the Industry and production. The worthiness of continuance or discontinuance of a worker concerned with production in an Industry and more so in a Chemical Industry, is a managerial and technical decision and the

Court should not generally interfere in it unless it is established that the termination of service of the workman is a *mala fide* one, vindictive, too harsh, and shockingly disproportionate to the misconduct committed or amounts to unfair labour practice. In the present case, though the workman has taken the plea that the management has terminated his service to accommodate other person in his post, he has not whispered a single word to establish it and in the instant case I do not find any *mala fideness*, illegality or arbitrariness in the action of the management warranting interference by this Court. Hence, the following Awards:—

AWARD

The reference is answered on contest without costs. The termination of services of Shri Rajendra Kumar Swain, Shift Assistant by the management of M/s. Sreechem Resins Ltd. with effect from the 28th November 1999 is held to be legal and justified. Shri Swain is not entitled to any relief.

Dictated and corrected by me.

P. C. MISHRA
16-7-2004
Presiding Officer
Labour Court, Sambalpur

P. C. MISHRA
16-7-2004
Presiding Officer
Labour Court, Sambalpur

By order of the Governor
D. MISHRA
Under-Secretary to Government